

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CONCRETE WASHOUT SYSTEMS,  
INC.,

NO. CIV. S-04-1005 WBS DAD

Plaintiff,

v.

ORDER RE: COSTS

MINEGAR ENVIRONMENTAL SYSTEMS,  
INC., a California  
corporation, PETER J. MINEGAR,  
and DOES 1-10,

Defendants.

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On July 13, 2005, the court granted summary judgment to defendants on plaintiff's service mark and trade name infringement claims under 15 U.S.C. § 1125(a), and declined to exercise jurisdiction over plaintiff's claim for declaratory relief under 28 U.S.C. § 2201 and plaintiff's state-law claims. Defendants have submitted a bill of costs totaling \$11,238.23.<sup>1</sup>

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<sup>1</sup> Defendants also initially included a request to recover attorneys' fees in their bill of costs. Plaintiff objected to defendants' raising attorneys' fees in the bill of costs. Thereafter, defendants filed a separate motion to recover their

1 Plaintiff objects to the amount submitted on three  
2 grounds: (1) defendants' bill of costs is defective because  
3 defendants failed to submit an adequate affidavit stating that  
4 each item claimed is correct and was necessarily incurred in the  
5 case as required by 28 U.S.C. § 1924; (2) costs for videotaped  
6 depositions should not be taxed; and (3) fees and disbursements  
7 for copying and printing costs are improperly charged.

8 Rule 54(d) (1) of the Federal Rules of Civil Procedure  
9 and Local Rule 54-292(f) govern the taxation of costs to losing  
10 parties, subject to limits set under 28 U.S.C. § 1920. See 28  
11 U.S.C. § 1920 (enumerating taxable costs); Fed. R. Civ. P.  
12 54(d) (1) ("costs other than attorneys' fees shall be allowed as  
13 of course to the prevailing party unless the court otherwise  
14 directs . . . ."); L.R. 54-292(f); Crawford Fitting Co. v. J.T.  
15 Gibbons, 482 U.S. 437, 441 (1987) (limiting taxable costs to those  
16 enumerated in 28 U.S.C. § 1920). There is a strong presumption  
17 in favor of awarding costs to the prevailing party. Miles v.  
18 State of California, 320 F.3d 986, 988 (9th Cir. 2003). The  
19 district court has discretion to determine what constitutes a  
20 taxable cost within the meaning of 28 U.S.C. § 1920. Amarel v.  
21 Connell, 102 F.3d 1494, 1523 (9th Cir. 1996). The losing party  
22 has the burden of overcoming the presumption in favor of awarding  
23 costs to the prevailing party. Russian River Watershed  
24 Protection Comm. v. City of Santa Rosa, 142 F.3d 1136, 1144 (9th  
25 Cir. 1998).

26 \_\_\_\_\_  
27 attorneys' fees so as not to complicate the taxation of costs.  
28 Therefore, the court will consider defendants' request for  
attorneys' fees when it decides defendants' attorneys' fees  
motion.

1 Defendants have complied with 28 U.S.C. § 1924. The  
2 statute requires the party seeking costs to attach an affidavit  
3 to its costs bill before the taxation of costs. The affidavit  
4 must state that the costs claimed are "correct" and were  
5 "necessarily incurred in the case and that the services . . .  
6 charged were "actually and necessarily performed."<sup>2</sup> Plaintiff  
7 correctly points out that the first declaration defendants  
8 submitted with its bill of costs did not meet this standard.  
9 However, defendants have submitted a supplemental affidavit from  
10 their counsel in this action stating that

11 [e]ach of [sic] item of cost identified in Defendants'  
12 Bill of Costs and all invoices attached to [this]  
13 declaration in support of [the] Bill of Costs, is  
14 correct and was necessarily incurred in the case, and  
the services for which fees were charged were actually  
and necessarily performed.

15 (Cialone Affidavit ¶ 3). This affidavit clearly meets the  
16 requirements of 28 U.S.C. § 1924.

17 The fact that the affidavit was not submitted initially  
18 is not fatal. A good faith amendment to a bill of costs to make  
19 it comply with § 1924 suffices to redeem an otherwise defective  
20 bill of costs. See Trammell Real Estate Corp. v. Trammell, 748  
21 F.2d 1516, 1518, & n.1 (11th Cir. 1984) (district court abused its  
22 discretion in disallowing costs to prevailing party where the  
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24 <sup>2</sup> Before any bill of costs is taxed, the party claiming  
25 any item of cost or disbursement shall attach thereto  
26 an affidavit, made by himself or by his duly authorized  
27 attorney or agent having knowledge of the facts, that  
such item is correct and has been necessarily incurred  
in the case and that the services for which fees have  
been charged were actually and necessarily performed.

28 28 U.S.C. § 1924.

1 party amended its bill of costs to comport with § 1924).

2 Therefore, defendants' bill of costs is not defective.

3           Plaintiff contends that defendants should not be  
4 allowed to recover costs for videotaped depositions because  
5 "[c]ourts are split on whether the costs of videotaped  
6 depositions are taxable." (Pl.'s Objections to Defs.' Bill of  
7 Costs at 3). The cases plaintiff cites do indicate such a split.  
8 See Tilton v. Capital Cities/ABC, Inc., 115 F.3d 1471, 1477 (10th  
9 Cir. 1997) (awarding costs for videotaping depositions); Marbled  
10 Murrelet v. Pac. Lumber Co., 163 F.R.D. 308, 329 (N.D. Cal.  
11 1995) (same); Mota v. Univ. of Texas, Houston Health Sci. Ctr.,  
12 261 F.3d 512, 520-530 (5th Cir. 2001) (holding that costs for  
13 videotaping depositions are not recoverable under 28 U.S.C. §  
14 1920); De Roburt v. Gannett Co., Inc., 558 F.Supp. 1223, 1228 (D.  
15 Haw. 1983) (denying costs for videotaping depositions).

16           The Ninth Circuit has not spoken to this issue, but the  
17 majority of district court cases in this Circuit that have  
18 addressed the issue have held that costs for videotaping  
19 depositions are recoverable under 28 U.S.C. § 1920. See Pixion  
20 Inc. v. Placeware, Inc., 2005 U.S. Dist. LEXIS 11351 \*6 (N.D.  
21 Cal. May 26, 2005) (allowing recovery of costs for videotaping  
22 depositions); Arboireau v. Adidas Salomon AG, 2002 U.S. Dist.  
23 LEXIS 20342 \*16 (D. Or. June 14, 2002) (allowing such costs where  
24 there is sufficient showing that videotaping was necessary);  
25 Alvarez v. IBP, Inc., 2001 U.S. Dist. LEXIS 25341 \*38 (E.D. Wash.  
26 Dec. 14, 2001) (leaving undisturbed award for costs for  
27 videotaping depositions); Nicolaus v. West Side Transp., Inc.,  
28 185 F.R.D. 608, 612 (D. Nev. 1999) (" . . . the costs of

1 videotaping and transcribing a deposition are taxable."); Marbled  
2 Murrelet, 163 F.R.D. at 329 (accord); but see Automotive Prods. V.  
3 Tilton Eng'g, Inc., 1994 U.S. Dist. LEXIS 20128 \*11 (C.D. Cal.  
4 Mar. 1, 1994) (approving clerk's refusal to tax costs for  
5 videotaping depositions); De Roburt, 558 F.Supp. at 1228 (denying  
6 costs for videotaping depositions).

7           The court is not persuaded that costs should always be  
8 allowed for videotaping all depositions. However, the majority  
9 trend of the district courts in this Circuit persuades this court  
10 that such costs should be allowed where there is some showing  
11 that the videotaping was reasonably necessary. Here, defendants  
12 note that this case involved issues of alleged fraud and  
13 misappropriation of trade secrets, issues where the veracity and  
14 credibility of witnesses would be at issue. Defendants thus had  
15 reason to videotape the depositions in case the deponents'  
16 visible reactions or tones of voice revealed something about  
17 their credibility. Because defendants' decision to videotape the  
18 depositions was reasonable, defendants may recover their  
19 videotaping costs.

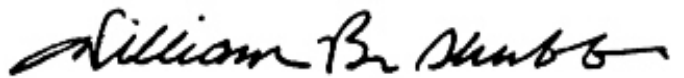
20           Lastly, the court addresses plaintiff's argument that  
21 defendants have failed to establish that the copying and printing  
22 costs claimed by defendants were necessarily incurred in this  
23 case as required by 28 U.S.C. § 1920. See 28 U.S.C. § 1920(4)  
24 (allowing taxation of costs for "Fees for exemplification and  
25 copies of papers necessarily obtained for use in the case").  
26 Frank A. Cialone, defendants' counsel in this matter, states in  
27 an affidavit submitted to this court why the copies and printouts  
28 were necessarily obtained for use in the case. Mr. Cialone

1 explains that plaintiff produced the bulk of its documents in  
2 electronic form on seven CDs that contained the equivalent of  
3 over 60,000 hard copy pages. (Cialone Affidavit ¶ 4).  
4 Defendants were unable to efficiently search the CDs to identify  
5 the relevant documents without first creating a centralized,  
6 searchable database of the information contained on the CDs.  
7 Therefore, defendants hired Document Technologies, Inc. ("DTI")  
8 to create such a database. This allowed defendants to  
9 selectively print only those materials they believed were  
10 relevant and necessary to defend the case. Defendants also paid  
11 DTI to create hard copies of the relevant database files.  
12 Defendants' counsel's firm performed all other photocopying.  
13 (Id.). This explanation is satisfactory. Therefore, defendants  
14 may recover their copying and printing costs.

15           After reviewing the bill, the court finds all other  
16 costs claimed to be reasonable. Accordingly, costs of **\$11,238.23**  
17 will be allowed.

18           IT IS SO ORDERED.

19 DATED: August 26, 2005

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22 WILLIAM B. SHUBB  
23 UNITED STATES DISTRICT JUDGE  
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